91-1486

Supreme Court, U.S.
FILED
MAR 16 1992
OFFICE OF THE CLERK

No:

In The

SUPREME COURT OF THE UNITED STATES

October Term ,1991

JACQUELINE ISAACS,

Petitioner,

v.

JAMES C. WALKER,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUUIT

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186

QUESTIONS PRESENTED

1. Whether the jury returned a verdict on the issues of liability and damages when the trial court instructed the jury that the clerk of the court would ask them when they returned their verdict how they found, and that they were to say " for the plaintiff or for the defendant" depending upon how they resolved the issues of liability and that if they found for the plaintiff on the issues of liability they were to then go on to say the amount of the award of damages for the plaintiff, and

whether when the jury so instructed was asked by the clerk how they found on the issues joined, for the plaintiff or for the defendant, and the jury said for the defendant, and whether when upon ruling on a motion for a new trial filed by the plaintiff the trial court ruled that the jury so instructed by it returned a general verdict for the defendant on the issues of liability and damages and that the jury so instructed by it could have found that the plaintiff suffered no compensable injury and when the Court of Appeals on an appeal filed by the plaintiff from the ruling of the trial court denying the motion of the plaintiff for a new trial did not address the issue as to whether the ruling by the trial court violated the teachings of City

of Los Angeles v. Heller, 475 U.S. 796, 106 S. Ct. 1571, 98 L. Ed. 806 (1986); under these circumstances did the trial court commit reversible error and otherwise violated the teachings of City of Los Angeles, supra, in the face of its instructions to the jury that they were to say "for the plaintiff or for the defendant" depending on how they resolved the liability issues and the jury said "for the defendant" as instructed by the trial court to do if they were to resolve the liability issues in favor of the defendant?

2. Whether, if the trial court were correct that the jury resolved the liability and damages issues against the plaintiff, the trial court on ruling on the

motion of the plaintiff for a new trial violated the law of the State of Maryland with respect to damages for which compensation are allowed when it ruled that there was significant expert testimony that the plaintiff suffered no compensable injury where the expert testimony went only towards whether the plaintiff was permanently injured or not, and not whether plaintiff sustained injuries that were compensable under the law of Maryland although not permanent when the trial court was sitting pursuant to diversity jurisdiction and when there was evidence of injuries not permanent which was not taken into account by the trial court and for which Maryland law would have allowed damages ?

TABLE OF CONTENTS

PAGE

QUESTIONS PRESENTED ..... (i)-(iv)

TABLE OF CONTENTS.....(v)-(vii)

TABLE OF AUTHORITIES.....(viii)

OPINIONS BELOW 2

JURISDICTION 2

CONSTITUTIONAL PROVISIONS
AND STATUES.....3

STATEMENT OF THE CASE.....4-24

REASONS FOR GRANTING THE WRIT....25-30

CONCLUSION.....31

APPENDIX: PAGE

Appendix A - On Petition for Rehearing with Suggestion for Rehearing In Banc 1a

Appendix B - Opinion of the Court of Appeals 3a

Appendix C - Memorandum 6a

Appendix D - Order 8a

Appendix E - Judgement Order 10a

Appendix F - Motion For A New Trial 12a

Appendix G - Memorandum of Points and Authorities 15a

Appendix H - Petition for Rehearing Suggestion for Rehearing In Banc 30a

Appendix I - Testimony of Petitioner 54a

Appendix J - Testimony of Dr. Descalzi 70a

Appendix K - Testimony of Dr. Forde 76a

Appendix L - Orthopaedic Consultation 83a

Appendix M - Testimony of Respondent 90a

Appendix N - Defendant's Answers to Interrogatories 96a

Appendix O - Testimony of Dr. Hunt 111a

Appendix P - Complaint 113a

Appendix Q - Answer 118a

Appendix R - Instructions to the Jury 124a

Appendix S - Jury Verdict 127a

Appendix T - Instruction to the Jury 128a

Appendix U - Portion of Appellee's Brief 138a

Appendix UB - Portion of Petitioner's Brief On Appeal 139a

Appendix V - Portion of Appellant's Reply Brief 141a

TABLE OF AUTHORITIES

CASES PAGE

Aspen Skiing Co. v.
Aspen Highlands Skiing Corp.
472 U.S. 585 26

Coco Cola Bottling Works v.
Catron,46 A.2d 303.....22,30

City of Los Angeles v. Heller
475 U.S. 796, 106 S.Ct.1571,
98 LEd. 806 20,26

Erie Railroad v. Tompkins,
304 U.S. 64,58 S Ct. 817,
82 L.Ed. 118 30

McAlister v. Carl
233 Md. 446, 197 A.2d 732 ...22,30.

Nicholson v. Blanchette,
239 Md 168, 210 A2d 732.....22,30

Patterson v. Goodyear Tire and
Rubber Co.
254 A.2d 198 .....22,?

Straughn v. Tsouvalos
246 Md. 242, 288 A.2d 300....22,30

No:_____

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1991

JACQUELINE ISAACS,

Petitioner,

v.

JAMES C. WALKER,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

Petitioner, Jacqueline Isaacs, petitions this Court for a Writ of Certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit entered on the 15th day of November, 1991, rehearing and suggestion for rehearing in banc denied, December 16, 1991.

OPINIONS BELOW

The opinion of the Court of Appeals for the Fourth Circuit was not published. The opinion is reproduced in the appendix.

Appendix: B-3a-5a .

The opinion of the District Court denying Petitioner's Motion for a New Trial was not published. The opinion is reproduced in the appendix.

Appendix: C-6a .

JURISDICTION

The jurisdiction of this Court vests by reason of 28 U.S. C. 2101 (c).

The judgment of the Court of Appeals for the Fourth Circuit was entered on November 15, 1991. Rehearing and Suggestion for Rehearing in banc was denied on December 16,1991.

CONSTITUTIONAL PROVISIONS AND STATUTES

NONE

STATEMENT OF THE CASE

On January 12, 1990, Petitioner commenced a civil action based on diversity of citizenship against the Respondent in the United States District Court for the District of Maryland, Appendix P -113a. The complaint alleged that Petitioner sustained personal injuries, some of which were permanent; pain of the body and mind, loss of income, expenses for treatment of her injuries, as a result of an intersectional collision involving her automobile driven by her, and the automobile of the Respondent, driven by the Respondent.

The Respondent filed an answer, Appendix Q- 118a, in which he alleged that the Petitioner was contributorily negligent, and that the occurrence was caused by the operator of a vehicle who was not a party to the lawsuit.

The case came on for trial before the United States District Court,sitting with a jury, on November 5th, 6th and 7th of 1990. The jury returned a verdict for the Respondent.

Evidence adduced at trial revealed the following: Petitioner was leaving her Bible study class at about 1:15 P.M. on May 14, 1989, when she stopped for a red light at the intersection of Philadelphia Avenue and Piney Branch Road in Montgomery County,

Maryland. She alleged that when the light changed she proceeded to make a left turn onto Piney Branch Road, and on doing so she was struck by an automobile driven by the Respondent who was proceeding South on Piney Branch Road and who failed to stop for the red light, striking Petitioner's automobile. Appendix I -54a-55a.

Following the impact, the Petitioner felt pain, Appendix I-62a-67a, which became worse and five days later she sought and obtained medical treatment and was diagnosed as having acute cervical strain, moderate; acute dorsolumbar strain, moderate.

Petitioner was followed by her doctor until about July 21, 1989, when she began to see a Dr. Descalzi, a chiropractor. She

continued to see Dr. Descalzi and was at the time of the trial still seeing him.

Petitioner was also seen by a Dr. Ford, an orthopaedic specialist who examined her on May 29, 1990, for the purpose of testifying at trial with respect to the issue of permanent injury sustained by the Petitioner, as alleged.

Petitioner was also examined by a Dr. Hunt, an orthopaedic specialist for the defendant on June 19, 1990, for the purpose of testifying as to the Petitioner's injuries. **Both the examinations by Dr. Ford and Dr. Hunt were approximately <u>one year</u> after the occurrence.**

Petitioner testified at trial about her pain and suffering from the time of the occurrence, <u>Appendix I- 62a-67a;</u> about her

inconvenience, Appendix I 68a-69a, and about her medical bills for treatment, Appendix I-61a. Petitioner also testified that she was involved in a prior accident in 1985, and that upon her release for that accident she had occasional pain. Appendix I-59a-60a.

Respondent's version of the accident was as follows: He was travelling on Piney Branch Road going towards the District of Columbia . He was in the middle lane. An automobile to the right of him swerved in front of him and cut him off. He did not wish to run into the back of the car that swerved in front of him so he went around it and proceeded through the intersection. Appendix M- 90a-95a.

When asked in an interrogatory the

following question, the Respondent responded as follows:

" Interrogatory No. 19. If you ran a red light, state the reason for the same.

"Answer No 19. I took evasive action to avoid a collision with another vehicle as mentioned above in response to interrogatory No. 15." Appendix N-96a-110a.

Respondent's answer to the interrogatory and the interrogatory were published to the jury at trial. Appendix N-96a-110a.

Apart from plaintiff's testimony with respect to the injuries she sustained, Plaintiff's orthopaedic expert, Dr. Ford, testified in response to the following questions, as follows:

"Q. Doctor, do you have an opinion based upon a your examination of (Petitioner) and reviewing her records as to whether or not , based upon a reasonable degree of medical probability , the condition from which she suffers is permanent?"

"A. Any time someone goes over six months with lumbar or cervical strain, I consider them to be permanent at that time, because they usually do not change. If they have gone on a year and they consistent (sic) still have pain, it usually is permanent. The level of pain is not usually going to change."

"Q.Doctor, do you have an opinion based upon a reasonable degree of medical

probability whether the accident in question , the accident of May 14, 1989, was a substantial aggravating cause of the worsening of the (Petitioner's) condition?"

"A. I can say that the accident did aggravate her symptoms, but that she did have underlying symptoms prior to that. " Appendix K-76a-82a.

Next, Dr. Descalzi testified that he first began to treat the Petitioner for her 1989 accident on or about July 21, 1989. Appendix J-70a-75a. Her major complaint was extreme pain in the cervical region. He continued to treat the Petitioner on a twice weekly basis. Dr. Descalzi was asked the following questions and gave the following answers:

"Q. Do you have an opinion based upon a reasonable degree of chiropractic certainty as to whether the accident in question was a substantial factor in bringing about the (Petitioner's) injuries?"

"A. That would be the 1989 accident?"

"A. Yes"

"Q. Okay. I think , at the very least, it aggravated the existing condition."

"Q. Doctor, did (Petitioner) explain to you that she was involved in an accident in 1985?"

"A. Yes."

"Q. And, based upon the records that you have examined and your treatment of (Petitioner) do you have an opinion based upon a reasonable degree of chiropractic

certainty as to whether the injury of 1989--whether the injury of 1989 aggravated or made worse the previous injury of 1985?"

"A. My opinion, my professional opinion, is that it aggravated and made worse the prior condition." Appendix J-70a-75a. Dr. Descalzi also testified that the Petitioner's injuries were permanent. Appendix J-70a-75a, and that Petitioner incurred costs of $4,378.00 on account of his treatment. Appendix J-70a-75a.

Respondent's only medical testimony as to the injuries sustained by the Petitioner came from Dr. Hunt who was asked the following questions to which he gave the following answers:

"Q. Doctor, after having examined the (Petitioner's) medical records and x-rays

as indicated, were you able to arrive at an opinion that you can base to a reasonable degree of medical probability with the area of your expertise as to whether (Petitioner) suffered a permanent injury from either the accident of March of 1985 or May of 1989?

Take one at a time."

"A. Well,I did form an opinion, yes."

"Q.And what was that opinion?"

"A. That there is nothing that would suggest that she is likely to be left with any permanent impairment of her physical function.

Certainly, she had none at the time I examined her; and therefore, I would conclude that with regard to May 14, 1989, she has no permanent impairment.

The second answer would be with regard to the March 1985 accident, and there is nothing to indicate that has caused any permanent impairment."

The trial court submitted the case to the jury and instructed the jury as follows:

The jury was instructed on the issue of negligence, Appendix T-130a-132a, on the issue of contributory negligence, Appendix T-132a-134a; on the issue of damages, Appendix T-134a-137a; and on the issue of how to report their finding, Appendix R-124a-126a .

Specifically, the jury was instructed as follows:

" There is no form to fill out. When

you come in , the clerk will simply say, ladies and gentlemen of the jury, have you reached your verdict, and you will all say we have. Then you will say who shall say for you, and you will say our forelady or foreperson . It is up to you which ever you prefer. Then he will ask you to stand up Miss Grimes (the foreperson) and he will ask you if you have reached your verdict , and you will say yes, and then he will say now do you find, and you simply say for the plaintiff or for the defendant, depending on how you resolve the liability issues

" If you have found for the plaintiff, then you will go on to say the amount of your award of damages for the plaintiff. That is all you have to do , and then he will ask you if you all agree that it is

a unanimous verdict. " Appendix R-124a-126a.

When the jury indicated it had reached a verdict the clerk, following the instructions of the trial court, stated as follows:

"The Clerk: Members of the jury, have you agreed on your verdict? "

"The jurors: We have ."

" The Clerk: Who shall say for you?"

"The jurors: Our forelady"

"The Clerk: Will the forelady please rise.

Who do you find for upon the issues joined, plaintiff or defendant?"

" The forelady: The jury finds for the defendant." Appendix S-127a.

Following the verdict the plaintiff filed a motion for a new trial, Appendix F-12a-14a; Appendix G-15a-29a.

In her motion for a new trial plaintiff alleged that the jury returned a verdict for the defendant on the issue of liability, and that this verdict was against the weight of the evidence. Appendix G-15a-29a.

The trial court sua sponte denied the motion for a new trial ruling that:

" This matter is before the court on the plaintiff's motion for a new trial, which will be summarily denied.

" Although there certainly was evidence of defendant's negligence, the fact that this case was decided by the jury on a general verdict against defendant (sic)

indicates that the jury could well have found-firmly based upon the evidence-that the plaintiff suffered no damages, thereby justifying a general verdict for the defendant. There was significant expert testimony tending to show that plaintiff suffered no compensable personal injury arising from the incident, and in that damages are a necessary element of negligence under Maryland law, see e.g. Read Drug v. Colwill Construction Co. 250 Md. 406, 412-413 (1968) the verdict of the jury must stand.

" A separate order will be entered denying the plaintiff's motion for a new trial. " Appendix C-6a-9a.

Plaintiff took an appeal from the order of the trial court denying her a new trial

and from the jury's verdict.

On appeal plaintiff argued that the trial court erred in interpreting the jury's verdict and violated the teachings of the City of Los Angeles v. Heller, supra.

Plaintiff argued on appeal that the trial court " instructed the jury to rule separately on the issues of liability and damages. The jury was to first decide the issue of liability, and if it found for the plaintiff it was then to go on to reach the issue of damages. " Appendix UB-139a-140a.

Plaintiff also argued that in the event the Court of Appeals were to find that the jury did decide the issues of liability and damages against the plaintiff that the trial court while appearing to concede that

the jury was incorrect on the issue of liability, was incorrect on the issue of damages because," Plaintiff testified that after the accident she felt dizzy and stiff and sore and experienced pain. The pain became worse and she decided to see a doctor. She began to see Phillips and Green who examined her, diagnosed her as having sustained cervical and lumbar strain, and who treated her for this condition. The plaintiff was next seen by Dr. Press and Dr.Descalzi both of whom found that plaintiff sustained an injury in the accident of March 14, 1989. ..." Plaintiff further argued that " While there were differences in the testimonies offered by the plaintiff and the defendant with respect to whether the plaintiff

sustained a permanent injury as a result of the accident of May 14, 1989, there was no testimony offered by the defendant that the plaintiff not was injured in the accident. In Maryland a plaintiff is entitled to recover for pain and suffering, medial bills, for aggravation of a pre-existing condition, restriction of activities. Patterson v. Goodyear Tire and Rubber Company, 254 A.2d 198 (1969); Nicholson v. Blanchette, 239 Md 168, 210 A. 2d 732 (1965); McAlister v. Carl, 233 Md 446, 197 A. 2d 140; Coco Cola Bottling Works v. Catron, 46 A.2d 303 (1946)." Appendix UB-139a-140a.

The Court of Appeals for the Fourth Circuit in an unpublished opinion affirmed the judgment of the District Court,

Appendix B-3a-5a. The Court of Appeals ruled that the conclusion reached by the District Court that the Petitioner suffered no compensable personal injuries was supported by the evidence and that " Although there was conflicting evidence on this element, the district court's ruling was amply supported by evidence in the record." Appendix B-3a-5a.

The Court of Appeals ruled the verdict to be a general verdict pursuant to Rule 59 of the Federal Rules of Civil Procedure, and did not otherwise deal with the argument of the Petitioner that the trial court instructed the jury to rule separately on the issues of liability and of damages and that they were to reach the issue of damages only if the found

liability for the plaintiff.

Petitioner filed a motion for a rehearing and for suggestion for a rehearing in banc, arguing that the Court of Appeals overlooked Maryland law on the issue of damages; failed to follow the presumption that the jury followed the court's instruction on how to announce the verdict, that they were to reach the issue of damages only in the event that they found liability for the Petitioner, and by not finding liability for petitioner they did not each the issue of damages. Appendix H-30a-53a.

The Court of Appeals denied the petition for a rehearing and suggestion for rehearing in banc.

REASONS FOR GRANTING THE WRIT

The instructions given the jury by the trial court clearly required the jury to reach the issue of damages only in the event they were to find liability for the plaintiff. The trial court instructed the jury that the Clerk would ask them if they reached their verdict and they would say yes and then he would ask them how they found, and that they were to simply say for the plaintiff or for the defendant depending on how they resolved the liability issues, and if they found for the plaintiff then they were to go on to state the amount of the award of damages for the plaintiff. Appendix R-124a-126a.

Whether a general or a special verdict, the trial court instructed the jury to announce the issue of liability first, and that when the clerk would asked them how they found, they were to announce their finding on the issue of liability, and were then to announce the amount of damages.

When asked by the clerk how they found on the issue of liability , as instructed by the trial court, the jury responded for the defendant. The jury then did not reach the issue of damages.

In City of Los Angeles v. Heller, 475 U.S. 796, 798; Aspen Skiing Co. v. Aspen Highlands Skiing Corp., 472 U.S. 585, 604, this court announced that there was a presumption that the jury followed the instructions given by the trial court.

If this presumption were to be applied in this case, it would be found that the jury was instructed to return a verdict on the issues of liability first, and were to reach the issues of damages only in the event that they found liability for the plaintiff.

Both the District Court and the Court of Appeals failed to apply this presumption. Instead, they dealt with the issue of whether the verdict was a general or a special verdict, and ignored the instructions actually given by the trial court.

It is clear that the jury verdict contemplated a two step answer. Thus, when the Clerk asked the jury how they found, the jury was not expected to say we find

a certain sum of money for the plaintiff. They were expected to say, as instructed, for the plaintiff or for the defendant. After this announcement, they were to then to announce the amount damages they found for the plaintiff, if they had found liability for the plaintiff.

(ii)

If the District Court were correct that the jury decided both issues of liability and damages against the plaintiff, the District Court and the Court of Appeals erred in ruling that the testimonies of the experts in this case conflicted on all issues of damages. Respondent's expert testimony went only towards the issue of

whether the Petitioner suffered permanent injury as a result of the accident in question. Respondent expert examined the plaintiff one year after the accident and rendered no opinion as to whether Petitioner suffered pain, stiffness, acute cervical strain, inconvenience, loss of income, or other element of damages compensable under Maryland law.

While plaintiff's experts testified that the plaintiff suffered permanent injuries as a result of the occurrence, there was other evidence which was clear that the plaintiff suffered damages as a result of the accident, even if the plaintiff suffered no permanent injuries.

Thus, the ruling by the trial court and the Court of Appeals in refusing to deal

with elements of damages that were not in conflict with respect to plaintiff's injuries that were not permanent, violated the principles of the Erie doctrine, Erie Railroad v. Tompkins, 304 U.S. 64, 58 S. Ct. 817, 82 L. Ed. 1188 (1938), where Maryland law provides for recovery for injuries that are not permanent. Straughn v. Tsouvalos, 246 Md. 242, 228 A. 2d 300 pp.310-311 . Peterson v. Goodyear Tire and Rubber Co.254 A2d 198; Nicholson v. Blanchette, 239 Md. 168; McAlister v. Carl, 233 Md 446, 197 A. 2d 1490 (1964); Coco Cola Bottling Works v. Catron, 46 A.2d 303 (1946).

CONCLUSION

For the reasons expressed above, Petitioner respectfully requests that a Writ of Certiorari be granted and that such a Writ issue to the United States Court of Appeals for the Fourth Circuit to review the judgment entered in this case.

Respectfully submitted,

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Appendix A

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

FILED

December 16, 1991

No. 90-1174

JACQUELINE ISAAC

Plaintiff - Appellant

v.

JAMES C. WALKER, JR.

Defendant - Appellee

On Petition for Rehearing with Suggestion for Rehearing In Banc

---

The appellant's petition for rehearing and suggestion for rehearing in banc were submitted to this Court. As no member of this Court or the panel requested a poll on the suggestion for rehearing in banc, and

As the panel considered the petition for rehearing and is of the opinion that it should be denied,

IT IS ORDERED that the petition for rehearing and suggestion for rehearing in banc are denied.

For the Court,

_____

CLERK

Appendix B

UNPUBLISHED

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

JACQUELINE ISAAC,
Plaintiff-Appellant,

v.

JAMES C. WALKER, JR.,
Defendant-Appellee.

No. 90-1174

Appeal from the United States District Court
for the District of Maryland, at Baltimore.
Frederic N. Smalkin, District Judge.
(CA-90-125-S)

Submitted: September 18, 1991

Decided: November 15, 1991

Before WIDENER, MURNAGHAN, and WILKINSON, Circuit Judges.

Affirmed by unpublished per curiam opinion.

COUNSEL

A. Palmer Ifill, LAW OFFICE OF A. PALMER IFILL, for Appellant.
Daniel Leonard Shea, BRAULT, GRAHAM, SCOTT & BRAULT, Rockville, Maryland, for Appellee.

Unpublished opinions are not binding precedent in this circuit. See I.O.P. 36.5 and 36.6.

OPINION

PER CURIAM:

Jacqueline Isaac appeals the district court's denial of her motion for a new trial after the jury returned a verdict for the defendant in this automobile accident liability suit. Because we find that the district court did not clearly abuse its discretion by denying Isaac's motion for a new trial, we affirm.

I

Isaac filed this diversity suit against James C. Walker seeking tort damages under a negligence theory for injuries she allegedly sustained after she and Walker were involved in an automobile accident in Montgomery County, Maryland, in May 1989. During the November 1990 trial, the only eyewitness evidence presented on the issue of liability was conflicting testimony by Isaac and Walker concerning the circumstances surrounding, and the party responsible for, the accident. The only other testimony concerning liability came from Linder Jackson, who testified about admissions Walker supposedly made shortly after the accident. After the district court sent the case to the jury, the jury returned a general verdict for the defendant. Isaac then filed a motion for a new trial pursuant to Fed. R. Civ. P. 59. The district court denied the motion.

The district court has the authority to weigh the evidence and assess witness credibility when resolving a motion for a new trial; its ruling on any such motion will be reversed only for a clear abuse of discretion. *Taylor v. Home Insurance Co.*, 777 F.2d 849, 855 (4th Cir. 1985); *see also Poynter v. Ratcliff*, 874 F.2d 219 (4th Cir. 1989) (review of district court's weighing of the evidence on a Rule 59 motion limited to the "most exceptional circumstances.") Here, the district court ruled that it was denying the motion for a new trial because of significant expert testimony which demonstrated that Isaac suffered no compensable personal injury arising from the accident. *See B.N. v. K.K.*, 538 A.2d 1175 (1988) (actual injury is an element of negligence). The district court's order demonstrates that the district court, after weighing the evidence and assessing the credibility of the witnesses, decided to deny the motion for a new trial based on its finding

that Isaac had not satisfied the injury element of the negligence cause of action. Although there was conflicting evidence on this element, the district court's ruling was amply supported by evidence in the record. Therefore, its denial of the new trial motion was not an abuse of discretion.

II

In conclusion, we affirm. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the Court and argument would not aid the decisional process.

AFFIRMED

Appendix C

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MARYLAND

JACQUELINE ISAACS :

v. :CIVIL ACTION NO.

S 90-125

JAMES C. WALKER, JR. :

MEMORANDUM

This matter is before the Court on the plaintiff's motion for a new trial, which will be summarily denied.

Although there certainly was evidence of defendant's negligence. the fact that this case was decided by a jury on a general verdict against defendant indicates that the jury could well have found -- firmly based on the evidence -- that the

plaintiff suffered no damages, thereby justifying a general verdict for the defendant. There was significant expert testimony tending to show that plaintiff suffered no compensable personal injury arising from the incident, and in that damages are a necessary element of negligence under Maryland law, see e.g., Read Drug v. Colwill Construction Co., 250 Md. 406, 412-13 (1968), the verdict of the jury must stand.

A separate order will be entered denying the plaintiff's motion for a new trial.

Frederic N. Smalkin

United States Federal Judge

Dated: November 13th, 1990

Appendix D

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MARYLAND

JACQUELINE ISAACS :

v. :CIVIL ACTION NO.

S 90-125

JAMES C. WALKER. JR. :

ORDER

For the reasons stated in the foregoing Memorandum, IT IS, this 13th, day of November 1990, by the United States District Court for the District of maryland, ORDERED:

1. That the plaintiff's motion for a

new trial BE, and the same hereby IS, DENIED;

2. That the Clerk of Court mail a copy of this Order and the foregoing Memorandum to counsel for the parties.

_____

Frederic N. Smalkin

United States District Judge

Appendix E

UNITED STATES DISTRICT COURT

District of Maryland

Judgement in a Civil Case

JACQUELINE ISAAC

v.

JAMES C. WALKER, JR.

Case Number: S-90-125

JUDGEMENT ORDER

This action came on for a trial by Jury before the Court, Honorable Frederic N. Smalkin, United States District Court Judge, presiding. The issues were tried of heard; the defendant having moved for a directed verdict at the conclusion of the plaintiff's case-in-chief, and a decision

having been duly rendered "DENYING" same, for reasons stated in open Court; and after final argument of counsel for the respective parties, and the Court's charge to the Jury, the Jury retired to begin their deliberations; after deliberating the Jury rendered a verdict in favor of defendant and against plaintiff.

IT IS this 7th day of November, 1990, for reasons stated in open Court on 11/7/90, after return of the Jury's verdict, ORDERED and ADJUDGED that: Judgement BE, and the same hereby IS entered in favor of defendant against plaintiff, with costs.

FREDERIC N. SMALKIN

UNITED STATES DISTRICT COURT

Appendix F

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MARYLAND

JACQUELINE ISAACS, :

Plaintiff, :

v. :CIVIL ACTION NO.

S 90-125

JAMES C. WALKER. JR., :

Defendant. :

_____x

MOTION FOR A NEW TRIAL

For the reasons set forth in the accompanying memorandum of points and authorities, the plaintiff, Jacqueline

Isaacs, by and through her attorney, moves the Court entry of an order granting her a new trial in this case.

Respectfully submitted,

_____

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Suite 1200
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202-223-8552

CERTIFICATE OF SERVICE

A copy of the foregoing was mailed, postage prepaid, this 8th day of November, 1990, to:

Daniel L. Shea, Esquire

101 S. Washington Street

Rockville, Maryland

20850

A. Palmer Ifill, Esquire

Appendix G

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MARYLAND

JACQUELINE ISAACS, :

Plaintiff, :

vs. :Civil Action No:
S-90-125

JAMES C. WALKER, JR. :

Defendant. :

_____x

MEMORANDUM OF POINTS AND AUTHORITIES

Plaintiff filed suit against the defendant alleging that she sustained personal injuries as a result of the

defendant's negligence on May 14, 1989 at about 1:30 P.M. at the intersection of Philadelphia Avenue and Piney Branch Road in Montgomery County, Maryland,

Plaintiff's alleged in her complaint that she was travelling along Philadelphia Avenue in her automobile when at the intersection of Philadelphia Avenue and Piney Branch Road, she stopped for a red light. Upon the light turning green she proceeded to male [sic] a left turn from Philadelphia Avenue onto Piney Branch Road. On doing so, defendant's automobile driven by defendant ran the red light and struck her automobile on the passenger's side.

At trial there were there three witnesses who testified on the issue of liability. Plaintiff and Mr. Linder Jackson testified on behalf of the

plaintiff. Defendant was his sole witness on the issue of liability.

The jury rendered a verdict against the plaintiff on the issue of liability. Plaintiff alleges that this verdict was against the weight of the evidence.

1. The Evidence At Trial

Defendant testified that he was proceeding South on Piney Branch Road in a direction towards the District of Columbia, when before he reached the intersection which consisted of two lanes and a turning lane, for a total of three lanes near the intersection, an automobile in right lane cut across of him and proceed into the turning lane. In order to avoid

hitting the automobile that had cut across his path, he swerved from the lane he was in to the outer right lane and proceeded through the intersection.

Defendant testified that as he swerved around the automobile that had cut across his path, he observed the light to be yellow. He did not testify as to the condition of the light that faced him as he entered the intersection.

Upon cross examination, defendant admitted to the following interrogatory and answer posited to him:

"Interrogatory No. 19 If you ran a red light, state the reason for the same."

"Answer No. 19. I took evasive action to avoid a collision with another vehicle as mentioned above in response to Interrogatory No. 15."

Plaintiff testified that she approached the intersection of Philadelphia Avenue and Piney Branch Road.

Upon the light facing her turning green she paused for a second or so the proceed to make a left turn from Philadelphia AVenue onto Piney Branch Road. She testified that she looked ahead of her and did not look to the right. The intersection was clear as she began her turn. In the process of making the turn she was struck on her right passenger side by the defendant's automobile.

She further testified that defendant admitted in her presence and in the presence of her witness Mr. Jackson and a police officer that he did ran [sic] the red light and promised to repair her automobile.

Defendant admitted that he mentioned to plaintiff that he promised to repair her automobile, but he denied admitting to her and the police officer and to Linder Jackson that he ran the red light.

Plaintiff's witness, Mr. Linder Jackson, testified that he reached the scene of the accident after occurrence, and he met and spoke with the defendant, the police officer and the plaintiff.

Mr. Jackson testified that the defendant was asked by him on three occasions whether he accepted responsibility for the accident. Defendant replied he did and that he would repair Ms. Isaacs' automobile. He further admitted to Mr, Jackson that he ran the red light.

Defendant denied that he admitted to Mr. Jackson that he ran the red light. He

denied that he admitted to Mr. Jackson that he would accept responsibility for accident. Instead, he stated that he told Mr. Jackson that he told Mr. Jackson that he would accept responsibility for his actions. He did admit, however, that he stated he would repair Ms. Isaacs' automobile.

Defendant's answer to plaintiff's Interrogatory No. 19 is attached hereto, Exhibit One.

11. The Verdict Was Against the Weight of the Evidence

A federal judge may set aside a verdict as contrary to the preponderance of the

evidence, although a directed verdict or judgement n.o.v. is not justified. Moore's Federal Practice, Vol. 6A, 59-144. Aetna Casualty & Surety Co. v. Yeatts, 122 F. 2d 350 (4 Cir.) (1941);

A federal judge is free to weigh the evidence and to assess credibility upon ruling on a motion for a new trial. Aetna Casualty & Surety, supra; Taylor v. Home Improvement Company, 777 F. 2d 292 (4 Cir.) (1984).

"A motion for a new trial involves a 'comparison of opposing proofs' William v. Nichols, 266 F2d, 389, 393 (4th Cir. 1959). the district court may set aside a verdict supported by substantial evidence, or is based upon testimony which is false' or is 'necessary to prevent a miscarriage of justice' Aetna Casualty v. Yeatts, 122 F.2d

350, 254 (4 Cir.) (1941)."

Ellis, supra, 745 F, 2d at 298.

In Marcoin, Inc. v. Edwin K. Williams & Co. Inc., 605 F 2d 1325 (4 Cir.) (1979), the matter involved a suit to enforce a claimed settlement agreement. One of the parties in answering an interrogatory admitted that it authorized, ratified or approved the preparation of, and the general terms of, but not the specific language of a letter which made an offer of settlement. The reviewing court noted that the import of such an admission in an interrogatory while not binding conclusively in all instances, must be weighed and considered by the trial court which must determine what weight to give to the answer. Marcoin, Inc., 605 F.2d at

1328.

The Marcoin Court referred to Maryland v. Kemp. 194 F.Supp. 838, 840 (DMd. 1961) where an answer to an interrogatory was weighed and used as evidence of negligence.

In the instant case the defendant answered an interrogatory which admitted that he ran a red light. His testimony at trial was only to the effect that at some distance from the intersection at the time the alleged automobile crossed his path the light facing him was yellow. The plaintiff stated that defendant admitted to him that he had ran the red light. Plaintiff' s witness, Mr. Jackson stated that defendant admitted to him that he ran a red light.

In addition, defendant stated that he promised the to repair [sic] the plaintiff's automobile. This statement was

repeated by the plaintiff and her witness, Mr. Jackson, who also added that it was stated in conjunction with defendant's admission that he ran the red light.

The jury in reaching its verdict may have believed that the defendant ran the red light but that the plaintiff was contributory negligent in that she failed to look to her right on receiving the green light. Plaintiff's testimony was that she looked ahead of her and the intersection was clear when she commenced her turn. She did not look to the right.

While a driver may not drive blindly across an intersection simply because the signal is green, and must allow traffic lawfully in the intersection to cross and then may proceed, a driver in the plaintiff's position is under no duty to

anticipate that another driver will disregard a red signal and intrude lawfully into the intersection. Baltimore Transit Company, et al. v. Putman, 250 Md. 19, 241 A2d 586 (1968); Haraszti v. Klarman, 277 Md. 234, 352 A.2d 833 (1976); Wright v. Hixon, 400 A.2d 1138 (1979).

Plaintiff's only duty was to determine whether the intersection was clear upon receiving the green light. She was only required to look ahead of her and at the intersection. this plaintiff testified she did. There was no other evidence to indicate that plaintiff did not look ahead of her before entering the intersection.

The defendant did not attempt to stop when he observed the yellow signal facing him some distance from the intersection. Md. Tansp [sic] Code Ann 21-202 (g)

provides that:

Steady yellow indication.- Vehicular traffic facing a steady yellow signal is warned that the related green movement is ending or that a red signal, which will prohibit vehicular traffic from entering the intersection, will he shown [sic] immediately after the yellow signal.

"(A) steady yellow signal puts a motorist on notice that a red signal is about to be displayed and warns him that he must be prepared to stop should the signal change to red before he enters the intersection." Haraszti, supra, 352 Md. at 833.

After the defendant stated that the automobile crossed in front of him, he then swerved to the outer lane, at which point he noted the light to be yellow. Defendant

had ample opportunity to bring his automobile to a halt by application of his brakes. He chose not to do so but instead entered into the intersection on the red light.

There being no evidence of contributory negligence on the part of the plaintiff, and there being no evidence that the defendant was faced with an emergency it is respectfully submitted that the verdict for the defendant was against the weight of the evidence.

It is respectfully submitted, that the motion if the plaintiff for a new trial be granted.

Respectfully submitted,

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Appendix H

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

JACQUELINE ISAAC :

Plaintiff - Appellant :

v. :NO: 90-1174

JAMES C. WALKER, JR. :

Defendant - Appellee :

x

PETITION FOR REHEARING

SUGGESTION FOR REHEARING

IN BANC

JACQUELINE ISAACS, by and through counsel, petitions this Court for a rehearing of her appeal and for in banc rehearing of her appeal. The reasons for this petition are as follows:

1. Material facts were overlooked in the decision of this court.

2. Material law was overlooked in the decision of this court.

In the opinion of counsel the material facts overlooked by this court are as follows:

(a) Expert testimony offered by the defendants-appellee was provided by Dr. Hunt who examined the plaintiff-appellant

for the purposes of testifying. Dr. Hunt's examination was one year after the accident. Dr. Hunt offered no testimony as to the plaintiff's condition from the date of the accident and before such time that he examined her for purpose of testifying.

Dr. Hunt's testimony went towards the issue as to not whether the plaintiff sustained any injury in the accident, but went solely towards whether the plaintiff suffered any permanent injury.

(b) The trial court in its instruction to the jury instructed it that it should first consider the question of liability. If the jury found the plaintiff on the issue of liability, and was to then and only then go on to consider the question of damages. if the jury were to find for the

defendant on the issue liability, it was not consider the issue of damages.

The trial court further instructed the jury that the Clerk would ask it how it found first on the issue of liability, and depending upon the answer would then ask it how it found on the issue of damages.

When the clerk asked the jury how it found, the jury pronounced verdict for the defendant.

(c) The defendant's answer to the following interrogatory was introduced into evidence and was admitted to on the stand by the defendant, as part of cross examination.

" Q. If you ran the red light, state the reason for the same."

" A. I took evasive action to avoid a

collision with another vehicle as mentioned in the above in response to interrogatory No. 15."

As part of his direct examination defendant testified that as he travelled in the middle lane an automobile from the right lane cut across in front of him and went into the left lane. As the automobile cut across of him he swerved into the right lane. As he looked up before he went around the automobile and while he was at an unspecified distance from the intersection he observed the light facing him to be yellow. The defendant made no attempt to apply his brakes, he testified.

(d) Offered and received into evidence

was testimony from plaintiff's witnesses detailing plaintiff's injury before the examination of Dr. Hunt, the defendant's expert. The testimony of Mr. Jackson was that while on the scene plaintiff complained of pain and stiffness, as a result of the accident.

Plaintiff's testimony was to the effect that she immediately began to feel pain after the impact. The pain became worse and she went to Drs. Phillip and Green who treated her upto July 6, 1989, at which time she changed doctors. The medical record of Phillip and Green was admitted into evidence and detailed that plaintiff suffered acute cervical strain, moderate; acute dorsolumbar strain, moderate, as a result of the accident of July 14, 1989. The Philip and Green examination was on

July 19, 1989, five days after the accident.

Also testifying as to plaintiff's injuries before the examination by the defendant's expert was Dr. Descalzi, a chiropractor. Dr. Descalzi began to treat the plaintiff on July 21, 1989, and concluded that the plaintiff sustained lumbopelvic strain as a result of the accident.

Also testifying to the plaintiff's injuries was Dr. Ford who was hired as an expert. Dr. Ford examined the plaintiff on May 29, 1990. This examination was twelve days after the examination by the defendant's expert. Dr. Hunt testified that at the time of his examination the plaintiff exhibited tenderness in the lower cervical spine and in the lower lumbar

spine. He further testified that in his opinion the plaintiff suffered permanent injuries as result of the accident of May 14, 1989.

II.

THE SIGNIFICANCE OF THE OVERLOOKED FACTS

A.

The three judge panel cited as one of its reasons for affirming the denial of the motion for a new trial was that the trial court ruled in its motion denying a new trial that there was "significant expert testimony which demonstrated that Isaac suffered no compensable personal injury arising from the accident.", Page 2, Slip Opinion, and that this finding was not an abuse of discretion.

Dr. Hunt examined the plaintiff on May

17, 1990, for an accident which occurred on May 14, 1989. Dr. Hunt was the defendant's expert. This was the only expert testimony offered by the defendant. Dr. Hunt's testimony at trial was offered only on the issue as to whether plaintiff sustained any permanent injury as a result of the accident of May 14, 1989. He stated that she did not suffer any permanent injury as a result of the accident of May 14, 1989.

Dr. Hunt could not have offered any testimony as to whether plaintiff was injured in the manner the Drs. Phillips and Green indicated she was five days after the accident, which Dr. Descalzi indicated she was when he examined her in July of 1989, two months after the accident, which plaintiff in her lay testimony indicated she was immediately after the accident and

which plaintiff's witness indicated she complained about on the scene of the accident.

Even if the choice was made to believe the defendant's expert over the plaintiff's expert on the issues to which they testified, i.e., whether the plaintiff sustained or did not sustain permanent injuries as a result of the accident, there was other evidence other than expert evidence to show that plaintiff did in fact sustain some injury as a result of the occurrence.

B.

The trial court in its instructions to the injury instructed the injury to consider separately two issues, liability and damages, and it informed it that the

clerk would ask it to report on these two issues separately. First the clerk was to ask the how they found on the issue of liability, and depending upon how this issue of damages. The court made it clear to the injury that if found for the defendant on the issue of liability it did not have to reach the issue of damages.

The jury found for the defendant on the issue of liability.

The trial court in its ruling on the motion for a new trial stated that the verdict rendered by the jury was a general verdict and although there was evidence of negligence, there was significant expert testimony which demonstrated that plaintiff sustained no compensable personal injury as result of the accident.

The court in its opinion went along

with the trial court in its characterization of the jury verdict as a general verdict and did not probe into the instruction given to the jury by the trial court instructing it not to reach the issue of damages if it found liability in favor of the defendant.

Based upon the instruction given jury by the trial court, the jury in this case did not reach the issue of damages. Thus, the conclusions reached by the trial court that the jury decided the issue of damages against the defendant was erroneous in two aspects, namely:

(a) The jury did not reach the issue of damages;

(b) Expert testimony offered at this trial went only towards the issue of permanent injury. And on only this issue

was there any conflict with respect to damages.

C.

Defendant's answer to the interrogatory introduced into evidence indicated that the defendant ran a red light, made no attempt to stop at the red light and injured the plaintiff. Whether or not the plaintiff was permanently injured, she was entitled to recover from the defendant some sum of money for injuries she received which were not permanent, if it were to be assumed that the injuries reached this issue (permanency) and decided it against the plaintiff.

Plaintiff's testimony was that she lost time from work because of the injury and because of having to seek attention because

of the injury she received. Plaintiff testified as to pain which began immediately after impact. Plaintiff's doctors who examined her five days after the accident and whose reports were admitted into evidence indicated five days after the accident that the plaintiff sustained cervical and dorsolumbar strain of a moderate nature.

The trial court failed to consider in its ruling on the motion for a new trial the non expert offered evidence of plaintiff's injuries. As to these there was no conflict. This court also failed to consider the non expert offered evidence of plaintiff's injuries.

111.

MATERIAL LAW OVERLOOKED

a. The Presumption that a Jury Followed the Court's Instructions:

There is a presumption that a jury followed the instruction given by the trial court. Los Angeles v. Heller, 475 U.S. 796, 798; Aspen Skiing Co. v. Aspen Highlands Skiing Corp., 472 U.S. 585, 604.

If this presumption were to have been applied this court would have found that the jury did not reach the issue of damages and that they were instructed to not reach this issue, if they found for the defendant.

The court instructed the jury as follows:

" ... Miss Grime (the foreperson) and he (the Clerk) will ask you if you have reached your verdict, and you will say 'yes', and then he will ask you how do you find and you will say for the plaintiff or for the defendant depending on how you resolve the liability issue."

Emphasis supplied. App. 278.

"If you find for the plaintiff then you will go on to say the amount of your award of damages for the plaintiff."

App. 278. Court's Instruction to the Jury. Emphasis supplied.

If the jury had followed the court's instruction the jury would not have reached the issue of damages in the context indicated by the trial court, as the jury would have only had found that the defendant was not negligent, or that the defendant was negligent but his negligence was not he proximate cause of the plaintiff's injuries.

In the event that the jury were to have found that the defendant was not negligent, this finding, even as suggested by the trial court, would have been against the clear weight of the evidence.

In the event that the injury were to have found that the defendant was negligent but that his negligence was not the proximate cause of the plaintiff's

injuries, such a finding would have been clearly against the weight of the evidence as the plaintiff's evidence of injuries, went not only towards permanent injuries, but to temporary injuries, such as pain, stiffness, loss of time from employment, and other temporary injuries, as to which there was no conflict, as suggested by the trial court with respect to the conflict on the issue of whether plaintiff sustained any permanent injuries as a result of the accident of May 14, 1989.

B. Maryland Law Overlooked:

Maryland law recognizes that a casual connection between negligence and injury need not always be shown by expert testimony. Straughan v. Tsouvalos, 246 Md.

242, 228 A.2d 300, 310-311.

When the disability develops coincidentally with, or within a reasonable time after the negligent act, a causal connections clearly apparent from the illness itself and the circumstances surrounding it, or where the cause of the injury relates to matters of common experience, knowledge, or observation of laymen, a causal connection is clearly apparent also. Straughan, supra, citing Wilhelm v. State Traffic Safety Commission, 230 Md. 91, 99; 185 A.2d 715, 719 (1962).

Thus, as to whether the plaintiff suffered injuries that were not permanent, such as pain and suffering, stiffness, soreness, inability to work, after the accident, cervical and lumbar strain, there was evidence that was overwhelming in this

regard.

The trial court and this court did not take into account the degree of proof required under Maryland law to show compensable non-permanent injuries.

C. Evidence Not Weighed:

The trial court based its decision to deny the motion for a new trial on the basis that "there was significant expert testimony which demonstrated..." that the plaintiff suffered no compensable personal injury. As indicated above, this testimony came from Dr. Hunt who examined the plaintiff one year after the accident and six months before the trial.

Had the trial court weighed the evidence, the trial court would have been

compelled to find that the plaintiff was injured in the accident, even though it found that "significant expert testimony" demonstrated that she suffered no compensable personal injury for the reason that expert testimony upon which this finding was based upon an examination conducted one year after the accident by the defendant's expert, not for treatment of the plaintiff, but for the purpose of testifying as an expert on the issue of whether plaintiff suffered any permanent injuries as a result of the accident. Gill v. Rollins Protective Service Co., 773 F. 2d 592, 595 4th Cir., 1985

IV.

CONCLUSION

For the following reasons, plaintiff respectfully requests that this case be reheard and that rehearing in banc the order of the trial court denying a new trial be set aside.

Respectfully submitted,

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202-223-8552

CERTIFICATE OF SERVICE

A copy of the foregoing was mailed, postage prepaid, this 5th day of December, 1991, to:

Daniel L. Shea, Esquire
101 S. Washington Street
Rockville, MD 20850

_____

A. Palmer Ifill, Esquire

Appendix I

Testimony of Petitioner

Q. Miss Isaacs, direct your attention to May 14th, 1989, would you tell the court and the ladies and gentlemen at about 1:30 in the afternoon or there abouts what occurred, what happened?

A. I was leaving my bible study group on my way home. I was traveling on Philadelphia, making a left onto Piney Branch.

When I got to the intersection and stopped for a red light, the light then changed, and I waited a couple of seconds before proceeded through the light because some people have a habit of running lights. I paused for a second, and then I made the left.

At the time I was making the left, it

was a few minutes after the light had changed. So, I thought -- I had no idea that any other car could come through the light. So, I made my left; and as I was making the left, a car did come through the light and hit my car.

Q. And who was the driver of the car that came through the light?

A. The gentleman that is sitting over there.

The Court: Indicating the defendant.

Q. And could you explain to the court and the ladies and gentleman of the jury the circumstances under which you ceased seeing Phillips and Green?

A. The same-- I think that July 6th was on a Friday, Thursday or Friday, and I was required -- or I wasn't required.

I was going to a convention in Richmond, Virginia that following week, and I went to the Doctor and I complained that the pain, it felt to me like it was getting worse, especially in the neck, and I wanted to go to this convention, and I had -- I think I did therapy, and then I went on to the convention that following week.

While I was at the convention, my neck went into a spasm. It was explained to me

afterwards that it was called a spasm, but while I was there the pain just got worse.

I woke up Monday,a nd the pain was so severe I couldn't stand it, and it just worsened throughout the day. For a moment it felt as if someone or something just had an icepick in their hand and just keep stabbing me in my neck and just wouldn't stop. The pain was extreme.

I left the hotel and went to a hospital in Richmond, and there were about a hundred people waiting in the waiting room. It was so severe that I couldn't sit out that wait. So I went back to the hotel to find out- someone drove me back to the hotel to find out if there was a doctor in the hotel.

There was a no doctor reserved for the hotel, but a doctor staying in the hotel

that came up to my room and saw me and saw the state I was in, and there was a chiropractor that was willing to help me at the time in the hotel. That was Dr. Press.

Testimony of Petitioner

Q. Miss Isaacs, you were involved also in ana accident in 1985.

A. Yes, I was.

Q. And could you tell the ladies and gentlemen of the jury when and if you were injured in that accident?

A. I was injured in the accident.

Q. Did you obtain treatment for that accident.

A. Yes, I did.

Q. And when did you cease obtaining treatment?

A. Dr. Minberg released me in '86, and after Dr. Minberg I had occasional pain and

I saw Dr. Anderson, and she released me in '87.

Q. And your release from Dr. Anderson in '87, can you explain to the court and the ladies and gentlemen of the jury what your condition was?

A. After I was released from Dr. Anderson, I felt fine. I felt okay. I had occasional pain, but nothing to really complain about or nothing to really seek medical attention about, and it was on an occasional basis.

Testimony of Petitioner

Q. I show you what has been marked as exhibit number 4. Can you identify that for us, please?

A. Yes, I can.

Q. And what is that?

A. A bill.

Q. From whom?

A. From Dr Phillips and Green

Q. And what was that bill for?

A. Treatment.

Q. As a result of what?

A. Treatment as a result of the accident that I had in 1989.

Testimony by Petitioner

By Mr. Ifill

Q. Miss, Isaacs, when the impact occurred, can you tell the court and the ladies and gentlemen of the jury as to what happened to you?

A. When the impact occurred, it was sudden and it was unexpected. I jerked, and it was a hard impact. I had to-- I was swaying around like this, and I had to get my car together and myself.

Q. Now, following the impact, could you tell the court and the ladies and gentlemen of the jury what, if any, were your feelings, how you felt?

A. Following the impact, I was quite

nervous, and I felt pain, but no severe pain.

Q. And how long did you remain at the scene?

A. Maybe fifteen minutes there abouts, fifteen, twenty minutes.

Q. Were you able to drive your car away?

A. I drove my car home.

Q. And could you tell the court and the ladies and gentlemen of the jury what happened after that point?

A. After that point the pain became worse, and I decided to go to a doctor.

Q. And who did you see?

A. Dr. Phillips and Green

Q. Would you tell the court and ladies and gentlemen of the jury, if you can, the date that you went to see Phillips and Green?

A. 5/19.

Q. What year?

A. 1989.

Q. And did they examine you?

A. Yes, they did.

Q. Did they give you a history?

A. Yes.

Q. And what examinations did they perform on you?

A. They did X-rays and examined my neck and examined my back and x-rays.

Q. What was you condition at that time, at the time of the examination?

The Court: Well, now, for what is the purpose is she looking at all of these exhibits?

Mr. Ifill: Just to record the dates.

The Court: To refresh her collection?

Mr. Ifill: Yes.

The Court: Do you know what she is looking at, Mr. Shea?

Mr. Shea: I don't.

The Court: Would you like to see them?

(Pause)

Mr. Shea: These are the reports, you honor. If she is refreshing her recollection as to the dates, I don't have any problem. I don't think it is proper for her to read from them.

The Court: All right.

By Mr. Ifill:

Q. During the physical examination, what was your condition?

A. I was in pain.

Q. Would you describe to the court and the ladies and gentlemen of the jury the pain that you were in? Can you describe the pain?

A. I feel stiffness up in my neck and along my back?

Q. And can you tell us how long they examination lasted?

A. The examination lasted for maybe twenty minutes or half an hour.

Q. And was a course of treatment

prescribed for you?

A. Yes, there was.

Q. What?

A. Physical therapy.

Q. How often did you go to physical therapy?

A. I think it was once or twice a week.

Q. And could you explain to the court and the ladies and gentlemen of the jury what the physical therapy consisted of?

A. The physical therapy consisted of exercises. There was traction -- I am sorry. I don't know if you know what traction is. They hooked me up to a machine to stretch and exercise the muscles in my neck and back, and exercises that I

had to do there and at home.

Q. And, with respect to home, what exercises were you required to do and how frequently?

A. I was required to do it every day, two time a day, in the morning and at night.

Q. Can you state to the court and the ladies and gentlemen of the jury whether or not the injury you sustained in the accident of '89 affected you in your performance of your duties at work?

A. Yes, it did. At work I am required to sit for a long period of time, which I cannot do. I am required to lift, I am required to stretch, to bend, and all of those things I do, but I do in pain.

Q. And, outside of your work, can you tell the court and the ladies and gentlemen of the jury how this injury affected your life?

A. Outside of work, I am not able to do

the things that I like to do, which is jogging, dancing, wearing high-heeled shoes, walking for long periods of time. Even when I sleep, even when I lie down, when I stand up, when I sit down.

Appendix J
Testimony of Dr. Descalzi

Q. Can you explain to the court and the ladies and gentlemen of the jury the meaning of the word permanence?
A. My definition of permanent would be something which has no immediate resolve in near future, something which is going to have prolonged treatment.

Q. Sir, do you have an opinion based on a reasonable degree of chiropractic certainty that the conditions from which Miss Isaacs suffers are permanent conditions?
A. In my opinion, there is permanency.

Q. And do you have an opinion based upon reasonable degree of certainty as to whether the accident of May 14th, 1989 was

the proximate cause of the injuries sustained by Miss Isaacs?

Mr. Shea: Objection

The Court: Well, he can't testify as to proximate cause. I think you put it in terms of substantial factor.

By Mr. Ifill

Q: Do you have an opinion based upon a reasonable degree of chiropractic certainty as to whether the accident in question was a substantial factor in bringing about Miss Isaacs' injuries?

A. That would be about the 1989 accident?

Q. Yes.

A. Okay. I think, at the very least, it aggravated the existing condition.

Q. Doctor, did Miss Isaacs explain to you that she was involved in an accident in

1985?

A. Yes.

Q. And, based upon the records that you have examined and your treatment of Miss Isaacs, do you have an opinion based upon a reasonable degree of chiropractic certainty as to whether the injury of 1989 -- whether the injury of 1989 aggravated or made worse the previous injury of 1985?

A. My opinion, my professional opinion,is that it aggravated and made worse the prior condition.

Q. And, doctor, can you state to a reasonable degree of chiropractic certainty whether it is possible to segregate the 1985 injury from the 1989 injury?

A. I don't think you can separate the two.

From the complaints and the objective and subjective findings, the second accident brought on, elicited much more severe neck cervical pain, and I also believe from the second accident Miss Isaacs did not have any leg referral like she had -- with the first accident she had no leg referral. She had low back pain. The second accident she had leg referral to her left leg.

So, it is very difficult to separate the two accidents.

Q. Doctor, can you state to a reasonable degree of chiropractic certainty whether future pain and discomfort is indicated for the type of injury that Miss Isaacs sustained?

A. Because of the trauma involved from the two accidents, there was some degree of

ligament or support tissue, the rubber bands that he keep the structure together, there was somesort of tearing, which would also affect the musculature.

There are unstable joints involved, and with unstable joints involved there will be nerve irritation, and to a certain degree of chiropractic certainty I think it is going to be a condition which she is going to have for the rest of her life.

It's going to be permanent. She is going to have acute exacerbation, acute flareups. That is my opinion.

Q. And can you state to a reasonable degree of chiropractic certainty whether treatment will be necessary over Miss Isaacs natural life?

A. Well, in my opinion, she is going to

have to go for some sort of therapy, whether it chiropractic or physical therapy. She has had results to point where she has had some relief from what chiropractic do.

So, in my opinion, I think throughout her life she is going to need some form of treatment.

Q. Now, sir, what is the cost of the services you have rendered, my services to Mrs. Isaacs.

A. Somewhere in the vicinity of 44 hundred dollars, 4378, right around 44 hundred dollars.

Appendix K
Testimony of Dr. Forde

Q. Doctor, do you have an opinion based upon your examination of Ms. Isaacs and reviewing her records as to whether or not, based upon a reasonable degree of medical probability, the condition from which she suffers is permanent?

A. Any time someone goes over six months with lumbar or cervical strain, I consider them permanent at that time, because they usually do not change. If they have gone on a year and they consistent still have pain, it usually is permanent. The level of pain is not usually going to change.

Q. Doctor, do you have an opinion based upon a reasonable degree of medical

probability whether the accident in question, the accident of May 14, 1989, was a substantial aggravating cause of the worsening of Miss Isaac's condition?

A. I can say that the accident did aggravate her symptoms, but did she have underlying symptoms prior to that.

The Court: In both the cervical and lumbar areas, Doctor?
The Witness: Yes.

Mr. Ifill
Q. Doctor, can you state with a reasonable degree of medical probability whether it is possible to separate the injury sustained by Miss Isaacs in the 1989 accident from the injuries that were sustained by her in

the 1985 accident?

A. No. It is impossible for me to separate the two of them and say that one caused fifty percent versus a certain amount. I did not examine her when she had her previous injury. I only examined her after the second.

The Court: Even had you done so, is there any way you could attribute the percentages?

The Witness: Well. if you know the patient beforehand or if you had seen the patient in '85 and then you come back and se the patient in '90, the you can say, well, the patient got better after '85, '86, '87, and the patient was getting better , and then all of a sudden she had a second injury and

now suddenly was worse again, and then you can definitely say, yeah, the injury did aggravate it.

If you just see the person one time, without having the benefit of prior knowledge of what the patient actually looked like, that's kind of difficult.

Q. Doctor, can you state with a reasonable degree of medical probability whether or not the injury sustained by Mrs. Isaacs is accompanied by future pain and discomfort?
A. Like I said before, once they get past six months, especially after a year, usually the level of pain that they have is going to be pretty consistent, and I think it is going to be a permanent level of pain.

Q. And, doctor, can you state with a reasonable degree of medical probability whether future treatment is indicated?

A. For people that we classify as having chronic lumbar-cervical strain, we try to get them into a rehab program, vocational rehab or some type of rehab program, where they can get back to work, because, once you have got that stigmata kind of attached to you, it is kind of difficult to get back in the workplace.

So, some type or rehab program to get them retrained in anew position.

The Court: Well, how about a physical treatment, doctor?

The Witness: Well, really, a physical exam doesn't show a lot of physical disability in terms of she doesn't have a real

restriction of motion or any neurological problems. It's more a matter of tailoring something work-wise for her to get back into.

Mr. Ifill: I have no further questions.

The Court: Mr. Shea.

Appendix L

ORTHOPAEDIC CONSULTATION

Date of examination: 5/19/89

Date of Injury: 5/14/89

Chief Complaint: Neck, mid, and low back pain

History: Patient was the driver of a vehicle making a left hand turn in Maryland, hit on passenger side by a second vehicle. Since then, she has had pain in the neck, mid and low back; and because of this, she comes in for orthopaedic evaluation and any indicated

treatment. She has continued working as a library technician since the time of the accident.

Medical Examination: Reveals head, eyes, ears, nose, and throat are normocephalic and atraumatic. Extraocular motions are full. There is tenderness to palpation about the upper trapezius bilaterally and immediate mid and low cervical region

with moderate local muscle spasm. Range of motion of the neck is about 40% of normal with pain and increasing muscle spasm at the extremes. Shoulder shrug is performed with good strength. Abduction at 140 degrees bilaterally causes pain in the upper trapezius. Reflexes, motor, and sensory about the upper extremities are within normal

limits.

Dorsolumbar spine reveals when standing erect, the patient bears weight equally on both lower extremities. Patient ambulates with satisfactory gait; can stand on heels and toes. Buttocks tone is good and equal bilaterally. There is tenderness from the mid dorsal to low lumbar region bilaterally, across

the superior and mid SI joints bilaterally, with moderate increasing muscle spasm distally. Range of motion of the low back is about 60% of normal with pain and increasing spasm at the extremes. Negative straight leg raise bilaterally. Patient can double leg hold. Reflexes, motor, and sensory about lower extremities are

intact. Patrick's is negative.

X-rays: Cervical, dorsal, lumbar spine and pelvis taken this office today reveal six lumbar vertebra. Otherwise no acute bone abnormalities.

Diagnosis: Acute cervical strain, moderate. Acute dorsolumbar strain, moderate.

Plan: Patient will be started on a course of physical therapy to be administered in this office to

the involved regions. Patient will be re-evaluated in two weeks. Patient is fit for working duty.

Jeffrey H. Phillips, M.D., Ph.D

A. And I was traveling in this direction, going towards the District of Columbia in the middle lane. there was a car alongside me here, and I was here, and I do not remember whether there was anybody in the turning lane at the time.

There was a car in front of me, already passing through the intersection.

This car here was a gold car, but I don't remember what type of car it was.

Q. Now, when you say this car here ---
A. The car to the right of me, traveling down Piney Branch Road.

Q. Tell us what happened, please.
A. This car for some reason cut me off in

that direction.

The Court: What direction?

The Witness: It cut me off going left to the turning lane at Piney Branch Road. It just cut me off. I in turn went around the car and proceeded through the intersection.

I did not want to at nay cost run into the back of this car that cut me off for the simple fact that the car I was driving was an 85 M.R. 2. It was my first car. I still had thirty-day tags on it. It was first car i ever owned. The first car I ever paid for out of my pocket. I didn't want anything to happen to it, and I wanted to after avoid any accidents.

So, I went around this car. I did not want anything to happen.

I went around this car and proceeded

through the intersection.

Now, when I looked up about at this point, the light was still yellow.

By Mr. Shea:

Q. Now, when you say at this point, are you able to tell us how far away you were?

A. No. I can't approximate where I was before I entered the intersection. It's kind of hard to approximate exactly where I was, but as I entered the intersection I noticed traffic on this side of the road, this side of the road, and this side if the road, and this side of the road.

Q. As you entered the intersection , you say you noticed traffic and then you said this side of the road, and you pointed to, just so I may be clear for the record,

westbound Philadelphia, Northbound Piney Branch and where else? Was there any on eastbound?

Testimony of Respondent

By Mr. Ifill

Q. Mr. Walker, a series of questions that was sent to you to be answered and it was answered by you and signed by your attorney Mr. Shea, called interrogatories, and question number 19, if you ran a red light, state the reason for the same. Answer number 19: I took evasive action to avoid a collision with another vehicle, as mentioned above in response to Interrogatory number 15.

Do you recall stating that as an answer to the question?

A. Yes, i did state that.

Q. If you ran a red light, if you had a reason for doing that?

A. That is correct. If I ran add red light.

Q. State the reason for the same.

A. That is correct.

Appendix N

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MARYLAND

JACQUELINE ISAACS,	:	
Plaintiff	:	
v.	:CIVIL ACTION NO.	S 90-125
JAMES C. WALKER. JR.,	:	
Defendant	:	

DEFENDANT'S ANSWERS TO INTERROGATORIES

COMES NOW the Defendant, JAMES C. WALKER, JR., by and through his counsel,

BRAULT, GRAHAM, SCOTT & BRAULT and Daniel L. Shea, Esq., and for his Answers to the Interrogatories propounded by Plaintiff, JACQUELINE ISAACS, herein, states as follows:

INTERROGATORY NO. 1: State your name, your current address, your date of birth, your social security number and your occupation.

ANSWER NO. 1: James C. Walker, Jr.; 546 Southampton Drive, Silver Spring, Maryland 20903; DOB: 1/13/69; Cashier, Safeway stores, Inc.

INTERROGATORY NO. 2: State and give all names used by you on the past five years, all addresses where you have resided for the past five years, all employment held by you for the past five years.

ANSWER NO. 2: James C. Walker, Jr.; 546 Southampton Drive, Silver Spring, Maryland 20903; from 11/88 through 11/89 resided at 13108 Larchdale Road, Apt. 6, Laurel, MD 20708.

INTERROGATORY NO. 3: State and give the names and addresses of all schools you have attended for the past five years.

ANSWER NO. 3: Springbrook High School; Montgomery Community College.

INTERROGATORY NO. 4: State and give the type of automobile you were driving when you became involved in the accident which forms the subject matter of this lawsuit.

ANSWER NO. 4: 1985 Toyota.

INTERROGATORY NO. 5: State and give

the tag number of the said automobile and the owner of the same, and the address of the said owner.

ANSWER NO. 5: Tag No. WSE 732; Owners are James C. Walker, Jr. and Gwen F. Walker, 546 Southampton Drive, Silver Spring, MD 20903.

INTERROGATORY NO. 6: state and give the name of the insurance company that carried insurance on the automobile involved in the occurrence.

ANSWER NO. 6: Government Employees Insurance Company, Washington, DC 20076.

INTERROGATORY NO. 7: State and give the nature of the risks insured and the amount of the insurance for the risks insured with respect to the automobile you were driving

at the time of the occurrence.

ANSWER NO. 7: My vehicle had full coverage at the time of the occurrence. the bodily injury coverage was $300,000.00.

INTERROGATORIES NO. 8: sate and give the number of your license, and attach hereto a copy of your driver's license, both front and back.

ANSWER NO. 8: Maryland Driver's license No. W-426-367-115-037, Class C license.

INTERROGATORIES NO. 9: For all accidents in which you were involved for the past ten years, state and detail the following:

(a) The location of the accidents;

(b) The dates of the accidents;

(c) The parties involved in the accidents;

(d) The court in which you appeared as a result of the accidents, giving the approximate dates thereof;

(e) The charges made against you as a result of the accidents;

(f) The fine, sentence levied, imposed as a result of the accidents.

ANSWER NO. 9: Objection, upon advice of counsel. In the spirit of discovery and without waiving this objection, I have been involved in no other accidents.

INTERROGATORIES NO. 10: For all suits filed against you as a result of accidents in which you were involved state and detail the following:

(a) The year the suit was filed;

(b) The name of the court and the place of the court;

(c) The parties involved in the suit;

(d) The disposition of the suit, and the manner by which the suit was disposed of settlement, trial or the like.

ANSWER NO. 10: See response to Interrogatory No. 9 above.

INTERROGATORY NO. 11: For each and every license suspension which you received in the past ten years, please state and detail the following:

(a) The dates of each suspension;

(b) The reasons for each suspension;

(c) The nature of each

suspension;

(d) The license number you used at the time of the suspension;

(e) The place from which you were suspended from driving.

ANSWER NO. 11: No suspensions.

INTERROGATORY NO. 12: You are requested to produce a copy of your driving record for the past ten (10) years.

ANSWER NO. 12: Objection. This is not a proper Interrogatory and upon advice of counsel, it will not be answered.

INTERROGATORY NO. 13: For all convictions or arrests for driving under the influence of alcohol, drugs, or intoxicants you were subject to in the past ten years, state and detail the following:

(a) The date, year, of each arrest and or conviction;

(b) The place of each arrest and or conviction.

ANSWER NO. 13: Objection, upon advice of counsel. In the spirit of discovery and without waiving this objection, there have been no such convictions.

INTERROGATORY NO. 14: For all crimes for which you have been arrested in the past ten years, state and detail the following:

(a) The charge for which you were arrested, and the place of your arrest;

(b) The date of any conviction, and the court where you were convicted;

(c) The disposition of any arrest, the date of the said disposition and the nature of the disposition.

ANSWER NO. 14: See response to Interrogatory no. 12 above.

INTERROGATORY NO. 15: State and detail the manner in which the accident involving you and the plaintiff occurred.

ANSWER NO. 15: I was traveling toward Washington, DC on Piney Branch Road in the middle lane of three (3) lanes. I was cut-off by another vehicle that, without warning cut in front of my vehicle from the far right lane to the far left lane as I approached the intersection. I an effort to avoid an collision with that vehicle, I moved into the far right lane and proceeded into the intersection. I was approximately half-way through the intersection when I was struck by another vehicle approaching from my left.

INTERROGATORY NO. 16: If you made nay statements to any one at the scene of the accident, state and detail what statements were made by you and to whom were the statements made.

ANSWER NO. 16: None other than telling the Officer essentially what is mentioned above.

INTERROGATORY NO. 17: State whether you made statements to a police officer at the scene of the accident in which you stated that you ran the red light.

ANSWER NO. 17: I made a statement to the Takoma Park Police Officers at the scene concerning how the accident occurred. I do not recall stating that I ran a red light.

INTERROGATORY NO. 18: State whether you made statements to any other person other than a police officer at the scene in which you stated that you ran a red light.

ANSWERS NO. 18: I spoke to a male friend of the Plaintiff's who stopped at the scene of the occurrence. I relayed to Plaintiff's male friend how the occurrence took place and inquired regarding repair work.

INTERROGATORY NO. 19: If you ran a red light, state the reason for this.

ANSWER NO. 19: I took evasive action to avoid a collision with another vehicle as mentioned above in response to Interrogatory No. 15.

INTERROGATORY NO. 20: State and give the name and address of any drug or alcohol treatment facility from which you have received treatment in the past ten (10) years, either as an outpatient or in-patient, and with respect to the same, please state and give the dates of treatment.

ANSWER NO. 20: Objection, upon advice of counsel. In the spirit of discovery, and without waiving this objection, there has been no such treatment.

INTERROGATORY NO. 21: Please state and give the names and the addresses of all witnesses to the occurrence which forms the subject matter of this lawsuit.

ANSWER NO. 21: The parties hereto.

I DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE FOREGOING FACTS AND INFORMATION IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION AND BELIEF.

_____

James C. Walker, Jr.

_____

Frederic N. Smalkin

United States District Judge

Appendix O

Testimony of Dr. Hunt

By Mr. Shea:

Q. Doctor, after having examined the patient and reviewed her medical records and x-rays as indicated, were you able to arrive at an opinion that you can base to a reasonable degree of medical probability within the area of your expertise as to whether Miss Isaacs suffered a permanent injury from either the accident of March of 1985 or May 1989?

Take them one at a time.

A. Well, I did form an opinion, Yes.

Q. And what was that opinion?

A. That there is nothing that would suggest that she is likely to be left with

any permanent impairment of her physical function.

Certainly. she had none at the time I examined her, and, therefore I would conclude that with regard to May 14th, 1989 she had no permanent impairment.

The second answer would be with regard to the March 1985 accident, and there is nothing to indicate that that has caused any permanent impairment.

Appendix P
COMPLAINT

UNITED STATES DISTRICT COURT
For the District of Maryland

JACQUELINE ISAACS, :

829 Whittier Place, N.W.

Washington, D.C. :

Plaintiff, :

vs. :

JAMES C. WALKER, JR., :

13108 Larchdale Road

Apartment 6 :

Laurel, Maryland 20708

Defendant. :

_____x

COMPLAINT FOR NEGLIGENCE

Jurisdiction:

Jurisdiction is vested in this Court by virtue of 28 U.S. C. 1332 in that the plaintiff and the defendant are citizens of different states and the amount in controversy being in excess of $50,000.00 excluding interest and costs.

Claim for Relief:

1. Plaintiff sustained personal injuries in the nature of hyperextension, hyperflexion, trauma to the cervical spine, cervical and lumbar injury, permanent injury to her cervical and lumbar regions, rotated vertebra, pain of the body and mind, medical expenses for past and future treatment, restrictions of her activities, income loss, all in the amount in excess of

$200,000.00 when she became involved in an accident involving the defendant on May 14, 1989 at Piney Branch Road and Philadelphia Avenue, Montgomery County, Maryland.

2. The proximate and sole cause of the accident and of the injuries plaintiff sustained was the negligence of the defendant, James C. Walker, Jr. in that the said defendant operated his automobile in a negligent and unsafe manner, contrary to the traffic regulations there and then in full force and effect ran a red light, failed to yield the right of way, and who, although he had the last clear chance to avoid the accident, by negligent and foreseeable conduct contributed to the same and caused the same

WHEREFORE, the premises considered

plaintiff pays that she be awarded the sum of $200,000.00 or such other and greater sum that the jury by verdict may render on account of the conduct of the defendant complained of herein.

JURY DEMAND

Plaintiff demands a trial by jury.

A. Palmer Ifill, No. 03506
Suite 1200
1133 15th Street, NW
Washington, DC 20005
202-223-8552

I certify that I am a Member of the Trial Bar of this Court and a Member of the Bar of the Court of Appeals of Maryland.

_____

A. Palmer Ifill, Esquire

Appendix Q

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MARYLAND

JACQUELINE ISAACS, :

Plaintiff :

v. : Civil Action No. S-90-125

JAMES C. WALKER, JR., :

Defendant :

ANSWER

COMES NOW the Defendant, JAMES C. WALKER, JR., by and through his counsel, BRAULT, GRAHAM, SCOTT & BRAULT and Daniel Shea, Esq., and for his Answer to the

Complaint for Negligence filed herein, states as follows:

FIRST DEFENSE

The Complaint fails to state a cause of action upon which relief can be granted.

SECOND DEFENSE

Responding to the specific paragraphs of the Complaint, the Defendant states the follows:

The jurisdictional allegations of the Complaint are not factual averments to which a response is required.

1. Responding to paragraph 1 for the Complaint for negligence, the allegations of paragraph 1 of the Complaint are denied.

It is admitted , however, that on May 14, 1989, an accident did occur involving the parties at Piney Branch Road and Philadelphia Avenue, Montgomery County, Maryland.

2. The allegations of paragraph 2 are denied.

WHEREFORE, the premises considered, the Court is respectfully requested to dismiss the Complaint herein.

THIRD DEFENSE

The Complaint is barred due to Plaintiff's contributory negligence.

FOURTH DEFENSE

The Complaint is barred due to Plaintiff having assumed the risk of the accident.

FIFTH DEFENSE

The occurrence which is the subject of Plaintiffs' Complaint was caused by the operator of a vehicle who is not a party to the law suit.

WHEREFORE, the premises considered, the Court is respectfully requested to dismiss the Complaint filed herein.

Respectfully submitted,

BRAULT, GRAHAM, SCOTT & BRAULT

Daniel L. Shea #00464
101 S. Washington Street
Rockville, Maryland 20850
301-424-1060
Attorneys for Defendant

JURY DEMAND

The Defendant, JAMES C. WALKER, JR., demands a trial by jury on all issues raised herein.

BRAULT, GRAHAM, SCOTT & BRAULT

_____

Daniel L. Shea

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Answer was mailed, postage prepaid, this 23rd day of February 1990, to A. Palmer Ifill, Esq., 1133 15th Street, NW, Suite 1200, Washington, DC 20005.

_____

Daniel L. Shea

Appendix R
Instructions to the Jury

The Forelady here is Miss Grimes, and she does not have any more -- you are randomly chosen. It is the first person that turns up on the list. That is how we get the foreman.

She has no greater vote than anybody else. Each of you has one equal vote among six; and, as I said, your votes have to be unanimous. However, somebody has to generally be in charge and preside over the deliberations and tally the votes and communicate with the court, and she is, but, again, she has no greater weight or vote than any of the rest of you.

She will be your spokesperson here in court when you have reached your verdict.

Miss Grimes, there is no form to fill

out. This is what will happen. You will simply write a note on plain paper, saying we have reached a verdict, and you sign it and put today's date, November 7th, on it, and tap on the door, and Derrick or one of the other Marshals will be here to take the note, and then we will all get together to take the verdict.

There is no form to fill out. When you come in, the clerk will simply say, Ladies and Gentlemen of the Jury, have you agreed upon your verdict, and you will all say we have. Then he will say who shall say for you, and you will say our forelady or foreperson. It is upto you, whichever you prefer. Then he will ask you to stand up, Miss Grimes, and he will ask you if have reached your verdict, and you will say Yes, and then he will say how do you find, and

simply say for the plaintiff or for the defendant, depending on how you resolve the liability issues.

If you have found for the plaintiff, then you will go on to say the amount of your award of damages for the plaintiff. that is all you have to do. And then he will ask you if you all agree that it is a unanimous verdict.

Appendix S
Jury Verdict

The Clerk: Members of the Jury, have you agreed on your verdict?

Jurors: We have.

The Clerk: Who shall say for you?

Jurors: Our for lady [sic].

The Clerk: Will the forelady please rise.

Whom do you find for upon the issues joined, plaintiff or defendant?

The Forelady: The jury finds for the defendant.

Appendix T
Instructions to the Jury

If you find that the plaintiff has proved negligence by a preponderance of the evidence, then there is one more thing for you to consider on liability, and this is the defense that has been raised of contributory negligence. On this defense the defendant, Mr. Walker, has the burden of proof by the same standard, a preponderance of the evidence.

Now, if you find that Mr. Walker was not negligent, that is, if you find that Miss Isaacs has not proved her claim of negligence, you don't have to go on to consider anything else.

If you find that Miss Isaacs has proved her claim of negligence, then the next thing you would consider logically is this

defense of contributory negligence on which Mr. Walker has the burden of proof by a preponderance.

The claim that Miss Isaacs puts forth is a claim of negligence, and she claims that the defendant was negligent in operating his car.

The elements of actionable negligence are, to the benefit of the jury, fairly short. There are four elements in negligence. The first is that someone, that is, the defendant, owes the plaintiff a duty to act in a certain way. if the duty is breached, that is the element two, and three, proximate cause four, injury to the plaintiff, then the plaintiff is entitled to recover.

APPENDIX

Portions of the Court's Instructions to the Jury.

Negligence:

"....So, the elements of negligence are simple, and that is that there first has to be made out a duty from the defendant to the plaintiff which was broken by the defendant, which proximately caused- I will explain proximate cause for you in a minute- the plaintiff to suffer some injury. That is all negligence is, and the nature of the duty is the duty to use ordinary care. That is the duty. Negligence simply is doing something that a person

using ordinary care would not do or not doing something that a person using ordinary care would do. ..."

P. 264, Petitioner's Appendix on Appeal.

Contributory Negligence:

" ... Now , the defendant here claims that he was faced with a emergency situation in driving his care, and this is part of the mix that goes into determining ordinary care, because remember I told you the duty is to exercise ordinary care under the circumstances as you find them to have been .

" When a driver of a care is faced with a sudden and real emergency which was not created by his own conduct, he or she must

exercise reasonable care for his or her own safety and the safety of others and the reasonableness of the driver's actions in such an emergency must be measured by the standard of the acts that other drivers of ordinary sill and judgment would exercise when faced with the same condition. ..

" Now if you find ha Mr. Walker was no negligent, that is, if you find that Miss Isaacs has not proved her claim of negligence, you don't have to go on to consider anything else.

" If you find that Miss Isaacs has proved her claim of negligence, then the next thing you would consider logically is the defense of contributory negligence on which Mr. Walker has the burden of proof by a preponderance.

"If you should finds that Miss Isaac was contributorily negligent,a I will explain it to you even though you have already found that Mr. Walker is negligent,m than he is still entitled to your verdict, because contributory negligence is a complete defense to primary negligence. ...."

Pages 248-249 Appendix of Petitioner on Appeal.

Portion of the Court's Instructions on Damages.

" ... In considering damages, you must keep in mind that your award must adequately and fairly compensate the plaintiff and tat your award should not be based on guess work.

" ... The defendant is liable, if at all, only for such of the plaintiff's injuries as are the natural and probable consequences of the accident subject to this lawsuit.

" Now, the causal connection- but hat includes aggravation of a prior condition in accordance with the instruction I am going to give to you in a minute.

" Now, the causal connection between a defendant wrongful act and a disability claim by a plaintiff does not necessarily need to be established by expert medical testimony, although it may be so done. This is particularly true when a medical condition coincidental with or within a reasonable time after a wrong act,when the causal connection is clearly apparent from the illness or condition itself and the

circumstance surrounding it or when the cause of the injury relates to matters of common experience ,knowledge, or observation.

" Moreover, when a medical condition or illness itself still exists after a long period of time and is accompanied by actual physical impairment or defect, you may infer from its continued existence that the injury is permanent in nature.

"Aa elements of damage, if you do get to the issue of damage, you should consider the personal injures sustained by the plaintiff, their extent and duration, the effect that they have had on her overall physical health and well being, the physical pain and mental anguish she suffered in the past and which with reasonable probability may be expected to

be experienced in the future, and the medial expenses reasonably incurred in the past and which with a reasonable probability may be expected in the future.

" Now, a plaintiff who had a condition before an accident may be awarded damages for the worsening of the condition. In other words, a a plaintiff may recover for the aggravation of a preexisting injury, If you find that the defendant is the cause of a the aggravation of a preexisting injury, then he is liable for that portion that he aggravated but not for the preexisting condition itself."

Pages 273-274 of Petitioner's Appendix on Appeal.

Appendix U
Portion of Appellee's Brief

It is apparent that Ms. Isaacs argument confuses the jury instructions or charge with the Court's directive to the forelady as to how she would "say" or announce the jury's verdict in open court after deliberation. (Appellant's brief at p. 14). The trial judge had completed a thorough instruction on the applicable law. Moreover, and indicative of the weakness of Ms. Isaacs' argument, immediately after telling the forelady how she should announce the jury's verdict, the court again reiterated that if the jury found for the Plaintiff below, then the forelady was to say the amount of the award of damages. (App. 278, lines 9-13).

APPENDIX UB

Portion of Petitioner's Brief On Appeal

"... The trial court instructed the jury to rule separately on the issues of liability and of damages . The jury was to first determine the issue of liability, and if it found for the plaintiff it was to then go on to reach the issue of damages. ..."

Page 14, Petitioner's Brief on Appeal.

"... While there were differences in the testimonies offered by the plaintiff and the defendant with respect to whether the plaintiff sustained a permanent injury as

a result of the accident of May 14, 1989; there was no testimony offered by the defendant that the plaintiff was not injured in the accident. In Maryland a plaintiff is entitled to recover for pain and suffering , medical bills, for aggravation of a pre-existing condition, restrictions of activities. Peterson v.Goodyear Tire and Rubber Company, 254 A.2d 198 (1969); Nicholson v. Blanchette, 239 Md 168, 210 A.2d 732 (1965);McAlister v. Carl, 233 Md 446, 197 A2d 140 (1964); Coco Cola Bottling Works v. Catron, 46 A.2d 303 (1946). "

Petitioner's Brief on Appeal at 20.

Appendix V
PORTION OF APPELLANT'S REPLY BRIEF

1. VERDICT WAS A SPECIAL ISSUE VERDICT

Appellee argues that there was no error made by the trial court in interrupting the jury's verdict, Brief at 6, and further argues that appellant "confuses the jury instructions or charge with the Court's directive to the forelady as to how to 'say' or announce the jury's verdict. ..." Brief of Appellee at 7. (Emphasis Appellee's)

However, appellee is silent on the effect of the trial court's "directive" to the jury, App. 277-278, and the jury's compliance therewith, App. 283; Brief for Appellant at 12, 14.

Although the court directed the remarks

to the forelady, it was clear that the court was speaking to the jury through its representative, the forelady.

The directive of the court to the jury was to return a special issue verdict on the issues of liability and of damages.

Rule 49, provides in pertinent part as follows:

> (a) Special Verdicts. The court may require a jury to return only a special verdict in the form of a special written finding upon each issue of fact. In that event the court may submit to the answer or may submit written forms of several special findings which might properly be made under the pleadings and evidence; or it may use such other method of submitting

the issues and requiring written findings thereon as it deems most appropriate. the court shall give the jury such explanations and instruction concerning the matter thus submitted as may be necessary to enable the jury to make its findings upon each issue. ... " Emphasis Supplied.

The court's 'directive' to the jury, as appellee called it was an instruction to return verdicts on issues of liability and of damages.

the jury then, did not reach the issue of damages; thus the statement by the court that the jury decided this case on a general verdict and that the jury could have found that the plaintiff suffered no damages, App. at 297, Appellant's Brief at

15, is a statement that is erroneous.

Supreme Court, U.S.
FILED
APR 16 1992
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(2)

No. 91-1486

In The

Supreme Court of the United States

October Term, 1991

JACQUELINE ISAACS,

Petitioner,

v.

JAMES C. WALKER, JR.,

Respondent.

Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Fourth Circuit

BRIEF IN OPPOSITION

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Counsel for Respondent

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

15

QUESTIONS PRESENTED FOR REVIEW

In an effort to comply with Rule 15 of the Rules of the Supreme Court regarding what issues are properly before the Court if certiorari were granted, the Court is advised that the questions presented by the petitioner before the United States Court of Appeals for the Fourth Circuit are different than the questions presented to this Court.

So that the Court can be advised as to the statement of the issues which the petitioner presented to the United States Court of Appeals, those issues are set forth as follows from petitioner's brief before the Fourth Circuit:

> (1) Whether the trial court properly interpreted the jury verdict?
>
> (2) Whether the trial court committed reversible error when it denied the plaintiff's motion for a new trial, and when it failed to weigh the evidence but merely ruled on the sufficiency of the evidence?
>
> (3) Whether the trial court abused its discretion when it denied the motion of the plaintiff for a new trial?
>
> (4) Whether the verdict for the defendant was based upon sufficient evidence?

The statement of issues presented by respondent before the United States Court of Appeals for the Fourth Circuit was phrased as follows:

> Whether the trial court clearly abused its discretion in denying the motion for a new trial on the ground that the verdict was against the weight of the evidence?

QUESTIONS PRESENTED – Continued

In addition, the Court is advised that counsel for petitioner at the trial level did *not* object to any of the instructions to the jury. This is pointed out because the first question presented by petitioner to this Court appears to be challenging the trial court's jury instructions.

It is respectfully submitted that the only possible issues which could have been raised in this appeal are limited to issues raised by petitioner before the United States Court of Appeals for the Fourth Circuit. It is further respectfully submitted that the questions presented by the petitioner to this Court differ materially from the issues raised below. Respondent respectfully objects to petitioner's insertion of new and different issues at this stage of the proceedings.

TABLE OF CONTENTS

Page

Questions Presented for Review i

Table of Contents iii

Table of Authorities iv

Jurisdiction 1

Statement of The Case 1

Summary of Argument 4

Argument 6

Conclusion 10

TABLE OF AUTHORITIES

Page

CASES

B.N. v. K.K., 312 Md. 135, 538 A.2d 1175 (1988) 10

City of Los Angeles v. Heller, 475 U.S. 796 (1986) 8

Gill v. Rollins Protective Services Co., 773 F.2d 592, 595 (4th Cir. 1985) 9

Peroti v. Williams, 258 Md. 663, 267 A.2d 114, 118 (1970) 10

Poynter v. Ratcliff, 874 F.2d 219 (4th Cir. 1989) 9

Read Drug v. Colwill Construction Co., 250 Md. 406, 412-13 (1968) 10

Rice v. Sioux City Memorial Cemetery, Inc., 349 U.S. 70, 74 (1955) 8, 9

Southern Power Co. v. North Carolina Public Service Co., 263 U.S. 508 (1924) 6

Taylor v. Home Insurance Co., 777 F.2d 849, 855 (4th Cir. 1985) 9

STATUTE

28 U.S.C. 2101 (c) 1

RULES

Supreme Court Rule 14.5, 28 U.S.C.A. 5, 6

Supreme Court Rule 15, 28 U.S.C.A. i

JURISDICTION

The jurisdiction of this Court vests by reason of 28 U.S.C. 2101 (c).

The decision of the Court of Appeals for the Fourth Circuit was rendered November 15, 1991. The petition for rehearing and suggestion for rehearing in banc was denied on December 16. 1991.

STATEMENT OF THE CASE

In an effort to address perceived misstatements of fact and/or omissions of fact in the petition, the following information is provided:

This motor tort diversity action arose from an intersectional collision. Following a two and one-half day trial to a jury, a general verdict for the respondent resulted. The petitioner filed a motion for a new trial on the ground that the verdict was against the weight of the evidence. That motion was denied by the trial judge and an appeal to the United States Court of Appeals for the Fourth Circuit ensued.

The vehicular accident which is the subject of this appeal occurred on May 14, 1989 at the intersection of Philadelphia Avenue and Piney Branch Road in Montgomery County, Maryland. The topography of the area of the intersection is flat. Prior to the accident, the vehicle operated by petitioner was at a stop, the first vehicle in her lane at the intersection in the left hand turn lane of westbound Philadelphia Avenue. There were vehicles

stopped in the through lane of westbound Philadelphia Avenue immediately to her right.

Piney Branch Road, at its intersection with Philadelphia Avenue, when proceeding southbound in the direction of travel of respondent's vehicle, consists of three lanes: a left turn lane, and two through lanes. Before reaching the intersection, respondent was in the middle of these three lanes southbound on Piney Branch Road going toward the District of Columbia. A car was being operated to respondent's right and in front of his vehicle also traveling southbound on Piney Branch Road. As respondent approached the intersection, that car "cut" left in front of respondent's vehicle, causing him to take evasive action by going to his right to avoid colliding with the rear of that vehicle. At that point, the light for southbound Piney Branch Road was yellow. There was traffic at all four intersecting corners, and the traffic on both east and westbound Philadelphia Avenue was stationary. A vehicle and a bicyclist were on eastbound Philadelphia Avenue. Petitioner recalled the bicyclist, but was unable to remember other motor vehicle traffic on eastbound Philadelphia Avenue. Petitioner's testimony was inconsistent as to whether she waited for a minute or two, or a second or two, after the light facing her turned green before proceeding to make a left turn into the intersection onto southbound Piney Branch Road. The collision ensued, wherein the right front passenger side of petitioner's vehicle came into contact with the left rear and driver's side of respondent's vehicle.

The trial testimony was in conflict regarding the discussion that occurred at the scene after the accident. A Mr. Jackson, who was not an eyewitness to the accident,

and who had known the petitioner for five and one-half years before the accident, testified that respondent admitted at the scene to the investigating police officer that he had run a red light. Respondent denied making such a statement. Respondent recounted what occurred in his discussion with the police officer, after the accident, and no citation was issued to either driver. No ambulance was called and the parties left the scene.

The medical testimony was somewhat divergent. Petitioner claimed neck and back injuries resulting from this 1989 accident. She told her chiropractor, Dr. Descalzi, during his treatment of her that she did not recall striking any part of her body against any part of her vehicle in the 1989 accident. Moreover, Gregory Ford, M.D., an orthopedic surgeon, who was one of petitioner's treating physicians, testified when called by petitioner that there was nothing about his examination of petitioner's anatomy that provided a medical explanation for her continuing symptoms. He further testified that he could not say that this 1989 accident, as distinct from an earlier March 1985 accident in which petitioner had been involved, either caused her symptoms or had any permanent impact upon her, or upon any pre-existing condition that she may have had.

On March 31, 1985, petitioner had been in an automobile accident, not wearing a seat belt, when a car coming in the opposite direction from hers struck her car head-on. She was thrown forward in that accident and she reported to her treating physicians that she hit her chest and chin against the steering wheel. She testified that, in that accident, her vehicle was traveling at 25 mph

and that the vehicle that struck her was going 40 mph at the time of impact. Her vehicle was totaled.

At the trial below, petitioner testified that she did *not* make a claim for permanent injuries resulting from the 1985 accident. The evidence revealed, however, that she had, in fact, made such a claim; that she answered interrogatories under oath claiming permanent neck and back injuries; that she was hospitalized for 22 days, and missed work for more than 16 weeks, was confined at home for three and one-half months, and last missed work through January 21, 1988, following the March 1985 accident.

Thomas E. Hunt, M.D., an examining physician, expressed his view that there was nothing whatever that he had reviewed which suggested that petitioner sustained any injury of any consequence at the time of the May 14, 1989 accident. He testified that, in his opinion, there was nothing in petitioner's medical records or in his examination of her that would suggest she was likely to be left with any permanent impairment of her physical function as a result of the May 14, 1989 accident.

Finally, at the trial below, the jury was read petitioner's interrogatory answer where she responded, "according to my doctors, my injury is not an aggravation of a previous injury."

SUMMARY OF ARGUMENT

At the outset, it is respectfully submitted that the petitioner has failed to present with accuracy, brevity and

clearness that which is essential to a ready and adequate understanding of the points requiring consideration, as mandated by Supreme Court Rule 14.5. This failure is sufficient reason for denying the instant petition for a writ of certiorari. In addition, it is, of course, essential for a petition for a writ of certiorari to be granted, that there be special and important reasons in support thereof. This case presents no such special and important reasons for the granting of the petition. In that regard, the Court is advised:

(a) The decision in this case by the United States Court of Appeals for the Fourth Circuit is not in conflict with the decisions of the various other circuits. Parenthetically, the decision in this case consists of a one and one-half page, unpublished *per curium* opinion. It has no precedential value.

(b) There has been no showing of any departure from accepted or usual course of judicial proceedings as to call for the exercise of this Court's power of supervision.

(c) The United States Court of Appeals for the Fourth Circuit has not, by reason of the decision below, decided any important questions of federal law not settled by this Court. Nor is the decision of the United States Court of Appeals below one which decided any federal question which, in any way, conflicts with the applicable decisions of this Court.

(d) Because of the petitioner's failure to object to the jury instructions in the trial court,

any objections at this stage of the proceedings to the jury instructions are not properly before this Court.

(e) There is no public importance to the issues that are arguably raised by this case. The case concerns a private motor vehicular tort action, involving only these parties and presents no new, novel or otherwise important issue meriting consideration by this Court.

(f) Finally, the decision by the United States Court of Appeals for the Fourth Circuit is correct in any event.

This Court should not issue a writ of certiorari.

ARGUMENT

I. THE PETITION SHOULD BE DENIED BECAUSE OF PETITIONER'S FAILURE TO ACCURATELY, BRIEFLY AND CLEARLY PRESENT ESSENTIAL POINTS.

Supreme Court Rule 14.5, 28 U.S.C.A., provides:

> The failure of a petitioner to present with accuracy, brevity, and clearness whatever is essential to a ready and adequate understanding of the points requiring consideration will be sufficient reason for denying the petition.

In *Southern Power Co. v. North Carolina Public Service Co.*, 263 U.S. 508 (1924), this Court dismissed a writ as improvidently granted when it developed that this Court was ultimately being asked to decide a question of fact concerning the sufficiency of evidence. 263 U.S. at 509.

Pointing out the impossibility of requiring this Court to critically examine the record before ruling on a petition for certiorari, the Court explained the need for clear, definite, and complete disclosures concerning a controversy when applying for certiorari. *Id.*

The petition here is not accurate, complete, definite, brief or clear. By way of example, it sets forth extraneous matters which were not in evidence at the trial below (e.g., defendant's Answer to Interrogatories at pages 96a – 104 of the petition). The petition is incomplete in that it fails to mention that petitioner's counsel, when specifically asked by the trial judge whether he had any exceptions or requests for additional jury charges, advised the trial judge that he had no exceptions and offered no additional charges. The petition fails to mention that one of petitioner's own treating physicians testified that there was nothing about his examination of petitioner that provided a medical explanation for her symptoms. Finally, it is submitted that the petition herein does not rise to any level of clearness, much less clearness essential to a ready understanding of the points sought to be raised for consideration. With all due respect to counsel, the "Questions Presented" section of the petition consists of incoherent, run-on sentences that are simply not comprehensible.

II. THIS CASE PRESENTS NO SPECIAL OR IMPORTANT REASONS FOR REVIEW.

Before this Court will exercise its judicial discretion and grant review by way of a writ of certiorari, there must be "special and important" reasons therefor. As

Justice Frankfurter observed in *Rice v. Sioux City Memorial Cemetery, Inc.*, 349 U.S. 70, 74 (1955),

> "Special and important reasons" imply a reach to a problem beyond the academic or the episodic.

No "special and important" reasons exist for the issuance of a writ of certiorari in this case. The unpublished decision by the Fourth Circuit has not been shown to be in conflict with the decisions of this Court. The decision in *City of Los Angeles v. Heller*, 475 U.S. 796 (1986) affords no basis for this petition. Petitioner's assertion that the trial court "violated the teachings" of *Heller* is not well founded. *Heller* observed that because appellate courts assume that juries act in accordance with the instructions given them and do not consider and base their decisions on legal questions with respect to which they are not charged, an argument that a jury may have reached a decision because of a theory of law about which they were not instructed was "unavailing". 475 U.S. at 798.

The facts in this case are such that the jury was properly instructed on the law of negligence and returned a general verdict for the respondent. There was no objection by petitioner's counsel to the instructions given, and no request was made for additional instructions. The jury here acted in accordance with the instructions given them. Petitioner's dissatisfaction with the jury's verdict, with the trial judge's denial of a motion for a new trial on the basis that the verdict was against the weight of the evidence, and with the Fourth Circuit's affirmance of that ruling, affords no special and important reason for this Court to review this case.

The petition here has not shown that the decision by the Fourth Circuit is in conflict with the decisions of any other United States Court of Appeals. It has not shown any departure from the accepted and usual course of judicial proceedings, or the sanctioning of any such departure. Thus, there is no need for this Court to exercise its power of supervision. No important question of federal law has been decided by the United States Court of Appeals. This Court does not " . . . sit for the benefit of the particular litigants," *Rice v. Sioux City Memorial Cemetery, Inc.*, 349 U.S. 70, 74 (1955) but only where special and important reasons exist. Because of the absence of any such reasons arising out of this automobile negligence action, this petition should not be granted.

III. THE PETITION SHOULD BE DENIED BECAUSE THE COURT OF APPEALS' DECISION IS CORRECT IN ANY EVENT.

It is well settled that when ruling on a motion for a new trial, the District Court has authority to weigh the evidence and to assess the witnesses' credibility and its ruling on any such motion will be reversed only for a clear abuse of discretion. *Taylor v. Home Insurance Co.*, 777 F.2d 849, 855 (4th Cir. 1985); *See also Poynter v. Ratcliff*, 874 F.2d 219 (4th Cir. 1989); *Gill v. Rollins Protective Services Co.*, 773 F.2d 592, 595 (4th Cir. 1985).

The trial judge below found that there was no reason to grant a new trial. In so holding, he observed that there was significant expert testimony tending to show that the petitioner had suffered no compensable personal injury arising from the motor tort. Observing that damages are a

necessary element of negligence under Maryland law, and citing to *Read Drug v. Colwill Construction Co.*, 250 Md. 406, 412-13 (1968), the trial judge ruled that the jury's verdict should stand. *See B.N. v. K.K.*, 312 Md. 135, 538 A.2d 1175 (1988) (actual injury is an element of negligence); *Peroti v. Williams*, 258 Md. 663, 267 A.2d 114, 118 (1970) (actual loss or injury to the plaintiff proximately resulting from defendant's conduct is among the basic elements necessary for a cause of action in negligence).

There was no showing of any abuse of discretion by the trial judge in denying petitioner's motion for a new trial. Absent a showing of a clear abuse of discretion, which does not exist under the facts of the present case, there was no error committed by the trial judge. The trial court's decision was correct under well established principles of tort law.

CONCLUSION

There have been no special and important reasons demonstrated as to why the petition should be granted. Neither the jury's verdict nor the trial judge's ruling on the motion for a new trial were in error. Accordingly, the petition seeking a writ of certiorari should be denied.

Respectfully submitted,

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